public policy has justified it in authorizing a company to build a railroad, public expediency does not justify it in authorizing that company to lease the road to another.[11] On all ordinary legal principles, a lessee is not the agent of the lessor, but the holder of an estate in the property. The lessor is powerless to terminate the estate, or control the actions of the lessee. To hold a lessor railroad responsible is to make it something more than an involuntary surety. After the legislature has authorized a lease, is a court justified because the lessor once owned the railroad and still retains its franchise and some small future estate in the land, in making it, in substance, an insurer? [12] There is a sound distinction between responsibility for the omission of a positive statutory duty, and liability for the wrongful acts of others.[13]

PRIORITY OF ASSIGNEES UNDER SUCCESSIVE ASSIGNMENTS OF EQUITABLE INTEREST. — If the beneficiary of a trust fund assigns his interest to A. for value and A. gives no notice of the assignment to the trustee; and later the beneficiary purports to assign the same interest to B., who, having no notice of the previous assignment, gives value and notifies the trustee of the transaction, which party is entitled to the fund in the hands of the trustee? [1] The English cases give the second assignee the priority.[2] New Jersey has recently adopted the English rule.[3] *Jenkinson* v. *New York Finance Co.*, 82 Atl. 36 (N. J.).

When A. sells a chattel to B. and then later purports to sell the same chattel to an innocent purchaser, the purchaser does not get the chattel, for A. has no longer any chattel to sell. But when Dearle *v.* Hall,[4] the leading English case on successive assignments of equitable interests, was decided,[5] the rule of law in England was that if A. still had the chattel in his possession, and delivered it to the innocent second purchaser, the purchaser could keep the chattel.[6] In an earlier case,[7] moreover, much relied on in Dearle *v.* Hall, it had been decided under the

[11] Where the legislature has expressly limited the lessor's liability, even these courts are bound by the legislature's determination as to public policy. See Singleton *v.* South Western R. Co., 70 Ga. 469.

[12] "The subject has been much discussed and some of the cases are characterized by lack of discrimination between liability for duties absolutely imposed by law upon the lessor company and duties arising from the manner of the operation of the trains." Hayes *v.* Northern Pacific R. Co., *supra*, 282.

[13] Railroad Co. *v.* Curl, 28 Kan. 622.

[1] The cases seem to make no distinction on this point between an equitable interest and a chose in action.

[2] Dearle *v.* Hall, 3 Russ. 1; Meux *v.* Bell, 1 Hare 73. See AMES, CASES ON TRUSTS, 2 ed., 326, note; 1 HARV. L. REV. 10.

[3] Two previous New Jersey decisions have uniformly been cited as holding a contrary doctrine, but the court in the principal case seems quite properly to distinguish them. Executors of Luse *v.* Parke, 17 N. J. Eq. 415; Kamena *v.* Huelbig, 23 N. J. Eq. 78. See Cogan *v.* Conover Mfg. Co., 69 N. J. Eq. 358, 372, 60 Atl. 408, 414.

[4] *Supra.*

[5] In 1828.

[6] Edwards *v.* Harben, 2 T. R. 587 (1788). But *cf.* Twyne's Case, 3 Coke, 80 *b.*

[7] Ryall *v.* Rowles, 9 Bligh N. S. 377, 1 Atk. 165, 1 Ves. 348 (1750). *Contra*, Bartlett *v.* Bartlett, 3 Jur. N. S. 284 (1857).

bankruptcy statute that a chose in action was a chattel, and was in the "possession, order and disposition" of the bankrupt so as to pass to his trustees in bankruptcy unless a former assignee had given notice to the debtor.[8] In both the above cases, the first sale or assignment passed everything that the seller had, and the buyer or assignee was required to do nothing more to complete his title.[9] It was simply because the seller retained possession of the thing sold that a second *bonâ fide* purchaser was protected. So it was not unnatural that in the case of an equitable interest, equity followed the existing law, and if the assignor could be said to retain possession over the equitable interest, then a second assignee who obtained possession would be protected. Where there are evidences of an equitable interest or a chose in action, as a bond or an insurance policy, it would seem that if the first assignee took possession of them he should be protected.[10] Where such is not the case the nearest approach to taking possession is notification to the trustee or debtor of the assignment.[11]

Shortly after Dearle *v.* Hall was decided, the English law as to the fraudulent retention of possession of a chattel by the seller was put on a sounder basis,[12] and to-day the better rule seems to be that it is only evidence of fraud.[13] So if equity had continued to follow the analogy of the law the better rule to-day would perhaps make failure on the part of the first assignee to give notice to the debtor or trustee merely evidence of fraud. But the principal case is in line with the present tendency of decisions in this country.[14] To contend, as the principal case does, that the first assignee has been negligent and so is not entitled to priority would seem to beg the question.[15] It is, however, true that modern business deals largely and freely with equitable interests and choses in action. And it tends, perhaps, to a fairer dealing with such interests to have as an unvarying rule that retention of possession by the assignor is "conclusive evidence" of fraud.

RATIFICATION OF UNAUTHORIZED CONTRACTS OF INSURANCE AFTER OCCURRENCE OF LOSS. — Can a policy of insurance obtained by an unauthorized agent be ratified by his principal after he knows of the loss?[1] Text writers usually state broadly that such ratification is effectual.[2]

[8] This latter was only a *dictum*, as the assignee had done nothing.

[9] See 19 YALE L. J. 258.

[10] Coffman *v.* Liggett, 107 Va. 418, 59 S. E. 392.

[11] The doctrine of retention of possession by the seller must not be confused with delivery which under the old law was necessary to perfect title. See WILLISTON, SALES, § 350.

[12] Martindale *v.* Booth, 3 B. & Ad. 498 (1832).

[13] See WILLISTON, SALES, §§ 352–404.

[14] Graham Paper Co. *v.* Pembroke, 124 Cal. 117, 56 Pac. 627; Lambert *v.* Morgan, 110 Md. 1, 72 Atl. 407; Phillips's Estate, 205 Pa. St. 515, 55 Atl. 213.

[15] Negligence is the failure to do something that the law requires to be done, and the very question here is whether the law says that the first assignee has a duty to give notice.

[1] The right is sometimes expressly given by statute. MARINE INSURANCE ACT, 1906 (6 EDW. 7, c. 41), § 86.

[2] See 2 CLEMENT, FIRE INSURANCE, 481; 1 JOYCE, INSURANCE, § 642; STORY, AGENCY, 7 ed., § 248.